

***THE HONOURABLE SRI JUSTICE V.ESWARAIAH**

+WRIT PETITION No.27335 OF 2007

% DATED: 27.12.2007

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Chinnamsetty Murali Krishna.

..... PETITIONER

AND

\$The District Collector,
Kadapa District & 2 others.

.....RESPONDENTS

! COUNSEL FOR THE PETITIONER: SRI L.J.VEERA REDDY

^ COUNSEL FOR THE RESPONDENTS: GP FOR REVENUE

< Gist:

>Head Note

? Cases referred

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BETWEEN:

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the action of the 1st respondent in rejecting the petitioner's revision in his Ref.No.E3/2594/2007, dated 06-08-2007, as illegal, unjust, arbitrary, and contrary to proviso to Section 9 and 8(2) of A.P.Records of Rights in Land Act, 1971 (for brevity, 'the Act') and consequently set aside the order of the 1st respondent passed in his Ref.No.E3/2594/2007, dated 06-08-2007, with further direction to entertain the revision of the petitioner as per Section 9 of the Act.

3. It is the case of the petitioner that he has purchased an extent of Ac.4.28 cents of the agricultural land in Sy.No.608 of Pedapalli village, Sidhout mandal, Kadapa District in public auction conducted on behalf of the District Co-operative Central Bank Limited., Kadapa for Rs.90,000/- and the sale was confirmed in favour of the petitioner on 26-04-2002. Pursuant to the sale the said land was registered in favour of the petitioner

on

22-05-2002. Thus, it is the case of the petitioner that he has got absolute right, title, and possession over the said property. It is stated that the petitioner has obtained permission from the Gram Panchayat, Pedapalli vide its resolution No.5, dated 30-11-2004, for construction of daba but the 3rd respondent obstructed the construction of the daba and therefore, petitioner filed O.S.No.25 of 2005 on the file of the Junior Civil Judge, Sidhout against the 3rd respondent-Commandant, XI Battalion, Andhra Pradesh Special Police, Bhakarapet, Sidhout mandal for permanent injunction and in the said suit temporary injunction was also granted.

4. While so, the 3rd respondent filed a petition before the 2nd respondent-Revenue Divisional Officer, Rajampet for cancellation of the pattadar pass book and title deed issued in favour of the petitioner in respect of the said land on the ground that the said land purchased by the petitioner was assigned in favour of the landless poor and the said assignee mortgaged the said land in favour of the District Co-operative Central Bank and for the non-payment of the mortgaged amount the bank sold the said property. It is further stated that the said land was resumed by the Government for the establishment of A.P.S.P.XI Battalion, and the 1st respondent-District Collector vide his proceedings, dated 07-03-2002, in R.Dis.No.5786/94 transferred the said land in favour of the 3rd respondent. It is stated that after the transfer of the said land in favour of the 3rd respondent petitioner purchased the said property in the public auction conducted by the District Co-operative Central Bank, Kadapa

and obtained the pattadar pass book and title deeds on 05-06-2002. Accordingly, 3rd respondent requested the 2nd respondent to cancel the pattadar passbook and title deeds granted in favour of the petitioner.

5. After hearing both the parties 2nd respondent cancelled and suspended the issuance of the pattadar pass books and title deeds in favour of the petitioner, and has taken a view that until the auction conducted by the Central Bank in respect of the assignment of the land is set aside by the competent authority, cancellation of the pattadar pass books already issued in favour of the petitioner becomes superfluous and accordingly 3rd respondent was given a liberty to file an appeal before the Registrar of Co-operative Societies or Co-operative Tribunal, Hyderabad for setting aside the auction conducted by the District Co-operative Central Bank. Aggrieved by the said order of the Revenue Divisional Officer, dated 16-05-2007, in D.Dis.637/2006 petitioner filed a revision before the 1st respondent under Section 9 of the Act and the revisional authority dismissed the revision on the ground that admittedly the suit filed by the petitioner is pending, and pending the suit, revision is not maintainable as it is not open for the petitioner to pursue parallel proceedings.

6. The endorsement of the District Collector, in Ref.No.E3/2594/2007, dated 06-08-2007, rejecting the revision on the ground that the suit filed by the petitioner is pending and therefore revision is not maintainable as it amounts to parallel proceedings is unsustainable and the said action of the District Collector cannot be approved. The issue in the instant case

before the 2nd respondent is to cancel the pattadar pass books and title deeds granted in favour of the petitioner. The 2nd respondent while exercising his powers under Section 5(5) of the Act suspended the pattadar pass books and title deeds granted in favour of the petitioner advising the 3rd respondent to file an appeal or revision against the auction conducted by the District Co-operative Central Bank. Admittedly, revision is maintainable against the order passed by the 2nd respondent under Section 9 of the Act. The suit filed by the petitioner is for permanent injunction and therefore it cannot be said that the relief claimed in the suit and the relief claimed in the revision is one and the same. Therefore I am of the opinion that revision is maintainable. Though the revision is maintainable I am of the opinion that this Court cannot grant any relief to the petitioner and this Court is also of the opinion that the order passed by the Revenue Divisional Officer suspending the grant of pattadar pass book and title deeds instead of cancellation is also not in accordance with law and the Revenue Divisional Officer ought to have cancelled the pattadar pass books and title deeds granted in favour of the petitioner for the following reasons:

Admittedly, the said land is assigned in favour of the landless poor. It is not known whether the lands were resumed by the Government after following due procedure prescribed in law under the A.P.Assigned Lands (Prohibition of Transfers) Act, but there is no dispute that the said land was transferred in favour of the 3rd respondent by the proceedings of the District Collector in R.Dis.No.5786/94, dated 07-03-2002. The said proceedings of the District

Collector have not been questioned by the petitioner. After the transfer of the said land by the Collector in favour of the 3rd respondent by proceedings dated 07-03-2002 only, the assigned land which was mortgaged in favour of the District Co-operative Central Bank by the original assignee was put to sale on 26-04-2002 i.e., after the transfer of the land in favour of the 3rd respondent and the sale was confirmed on 06-04-2002 and the pattadar pass book and title deeds were issued only on 05-06-2002.

7. The question that arises for consideration is whether the mortgage of the assigned land by the landless poor in favour of the Central bank can be alienated even in the public auction for non-payment of the mortgaged money.

8. As per the provisions of the A.P.Assigned Lands (Prohibition of Transfers) Act the lands assigned in favour of the landless poor are not alienable but only inheritable. The “assigned land” has been defined under section 2(1) of the A.P.Assigned Lands (Prohibition of Transfers) Act as follows:

2(1) “assigned land” means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word “assigned” shall be construed accordingly.

Explanation:- A mortgage in favour of the following shall

not be regarded as an alienation, namely ____

- (i) the Central Government or the State Government or any local Authority.
- (ii) Any Co-operative society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964; and
- (iii) Any bank which includes____
 - (a) The Agricultural Development Bank;
 - (b) The Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;
 - (c) The State Bank of India constituted under the State Bank of India Act, 1955;
 - (d) A subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; and
 - (e) A corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

9. Under Section 2(6) of the A.P.Assigned Lands (Prohibition of Transfers) Act “transfer” means any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction.

10. Therefore, the assigned lands are not alienable either by way of sale, gift, mortgage, with or without possession, lease or any other transaction with assigned lands, not being a

testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction.

11. The only exception for mortgage in respect of the assigned lands are in favour of the State or Central Government or any bank including the agricultural development bank, Reserve Bank, State Bank etc., as the aim and object of the Act is to protect the lands assigned in favour of the landless poor permanently and therefore Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act prohibits the transfer or alienation of the assigned land in any manner including the mortgage but even if the said lands are mortgaged in favour of the State, Central or the Cooperative Central Banks, the scheme of the Act does not contemplate the sale of the mortgaged land in favour of the State or Cooperative Central Bank. Only a permission has been granted to mortgage the land in favour of the bank for the purpose that any mortgage in favour of the Cooperative Central Bank shall not be treated as transfer. Section 2 Explanation clearly indicates that mortgage in favour of the Central Government, State Government, any local authority, or Cooperative Central Bank or banks shall not be regarded as alienation. Therefore, if the mortgage is not treated as alienation even the banks are also not entitled to sell the said assigned land in realization of the mortgaged money. Therefore, I am of the opinion that the sale of the assigned land by the bank pursuant to the mortgage by the landless poor is illegal and unsustainable. The course open for the petitioner is to take appropriate steps for recovery of the sale consideration paid to the bank.

12. I have elaborately considered about prohibition of the alienation of the assigned lands in W.P.Nos.2985 of 2003 & batch, dated 17-12-2007. Having regard to the facts and circumstances of the case, and for these and other reasons stated in the above Writ Petitions, this Writ Petition is dismissed. No order as to costs.

V.ESWARAIAH,J

27th December, 2007.
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